vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1000 OF 2003

Shir Indar Prabhakar Dounde ... Appellant

V/s.

The State of Maharashtra ... Respondent

None for Appellant
Mr.A.S. Shitole, APP, for Respondent

CORAM: **D.G. DESHPANDE &**
SMT.NISHITA MHATRE, JJ.

DATED: **JUNE 4, 2007**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. This Appeal is preferred against the conviction of the accused under section 302 of the Indian Penal Code. The accused has been sentenced to life imprisonment and payment of fine of Rs.500/- by the impugned judgement and order dated 21.3.2003.

2. The accused and the victim Kunda lived as man and wife with the parents and other members of the family of the accused. They had one son who was about 3 months old when the incident occurred. On 13.6.1999, the accused came home in the afternoon in an intoxicated state and started abusing her since she had not filled and stored water in their home in the morning for being used during the day. In the absence of the other members of the family of the accused, at about 4.30 pm, he again started abusing the victim. He told her that

he would set her on fire and did so by dousing her with kerosene and set her on fire. The accused prevented the victim from going out of the house by bolting the door from the inside. The victim shouted out for help. The accused then tried to put out the fire with his hands and then by throwing water on the victim. He then ran away from the house. The victim went to her mother's house which was nearby and then to the police station to lodge a complaint. She was later taken to the hospital. The hospital records show that the history narrated by the victim to the attending Doctor was that her husband had poured kerosene on her and set her on fire. The record also indicates that the victim mentioned that the fire was extinguished by her husband by pouring water over her. She was admitted to hospital at about 6.30 pm. Two dying declarations were recorded, one by the SEO and the other by the Investigating Officer. The victim suffered 30 - 35% superficial to deep homicidal thermal burns. The victim succumbed to these injuries on 19.6.1999. The accused was arrested on 20.7.1999 and charged with murder. He was tried by the Sessions Court for Greater Bombay. The accused has been convicted and sentenced as aforesaid.

3. As the advocate for the accused was not present in Court although the matter was called out twice, we found it necessary to proceed with the matter with the assistance of the learned APP. We have scrutinised the

evidence on record including the dying declarations. We have also perused the judgement of the learned Sessions Judge impugned in this Appeal.

4. Seven witnesses have been examined by the prosecution in this case. Before we come to the oral testimony of these witnesses, it would be appropriate to consider the dying declaration recorded by the SEO, who had been examined as PW2. The SEO had recorded this declaration after ascertaining from the Doctor attending to the victim that she was in a position to have her statement recorded. The SEO has stated that nobody was present when he recorded the victim's statement. The victim has stated in the dying declaration that she was not married to the accused but was living with him after leaving her parents' house about two years prior to the incident which occurred on 13.6.1999. She has stated that the accused started harassing her two months after they started living together. He often beat her. According to the victim on 13.6.1999, the mother and the brother of the accused left the house at 10am. She, the accused and their three month old son were in the house. The accused then went out of the house and returned at about 1 pm, after imbibing liquor. He assaulted the victim since she had not stored water in the morning. According to the victim, the mother of the accused left the house at about 3 O'clock in the afternoon after cooking a meal. Again at about 4.30 pm, the accused

threatened to set fire to the victim since she had not filled water and had not bothered to visit his father who was hospitalised a week earlier. The victim has stated in the dying declaration that the accused then bolted the door of the house from the inside, poured kerosene over her and then set her on fire. She tried to resist due to which her bangles and necklace that she was wearing, broke. She then started shouting out and tried to unlatch the door. The accused prevented her from doing so. The accused after a while tried to extinguish the fire by trying to put out the flames with his bare hands and then dousing the victim with water. According to the victim, the accused removed her clothes which were burnt and then ran away. The victim has stated that she wrapped a saree around herself and proceeded to her mother's place after which they went and lodged the complaint with the police.

5. The first dying declaration has been recorded by the Investigating Officer at about 7.30pm on 13.6.1999. The SEO recorded the declaration after 8.30pm and submitted it to the Investigating Officer at around 10.30 pm. The two declarations are consistent with each other. We have, therefore, no reason to disbelieve them. The Sessions Court was fully justified in placing reliance on the dying declarations.

6. However, we have noticed that both PW3 who is a

neighbour of the accused and PW5 who is the Doctor who attended the victim have stated that the accused had suffered burns. PW3 has stated that he saw the accused coming out of his home with his hands burnt. PW5 has deposed that the accused was brought to the hospital at about 9.15 pm on 13.6.1999. He had sustained 20 - 25% burn injuries on his neck, part of his face, shoulders, left arm and part of his right arm, part of his chest, abdomen and left arm. The Doctor in her deposition has opined that such injuries were possible on the accused if a person who was set afire tried to cling to the accused. However, in the cross-examination she has conceded that if a person tried to extinguish a fire, it was possible to suffer the type of burns which the accused had sustained. In view of this evidence on record, we are convinced that the accused cannot be held guilty of murder. It was obvious that the accused after setting the victim on fire, realised his folly and was filled with remorse and therefore extinguished the fire. The victim has stated so in the dying declaration. Thus though the accused had the knowledge that his action would in all probability lead to the victim’s death, his subsequent conduct indicates that he had no intention to kill her. We are therefore, of the opinion that the accused is guilty of culpable homicide not amounting to murder. Hence, the following order:

ORDER

i) Appeal is partly allowed.

ii) Conviction of the accused/appellant under section 302 of the Indian Penal Code and the sentence of life imprisonment imposed upon him is set aside.

iii) The accused/appellant is, however, convicted under section 304 Part II of the Indian Penal Code and sentenced to suffer R.I. for seven years.

iv) The accused/appellant will be entitled to set off.

7. Appeal is disposed off accordingly.

(D.G. DESHPANDE, J.)

(SMT.NISHITA MHATRE, J.)